

FOR YOUR CONSIDERATION

In the 3rd quarter of 2009

PERSONAL TAX

87(1)

MEDICAL EXPENSE - AIR CONDITIONER

In an April 27, 2009 **External Technical Interpretation**, CRA notes that a taxpayer may claim the cost of installing a central **air conditioner** as a **medical expense** providing certain tests are met.

In particular, the taxpayer needs a **prescription** from his/her **doctor** which **indicates** that he/she needs an air conditioner to help cope with an ailment which is both **severe and chronic**. Also, the medical expense claim for an air conditioner is limited to the lesser of **\$1,000** and 50% of its cost.

MEDICAL EXPENSES - OUT-OF-COUNTRY

In a May 19, 2009 **External Technical Interpretation**, CRA notes that the cost of **stem cell therapy** which is **not available in Canada** will qualify as a **medical expense**. This includes payments to **medical practitioners**



and **hospitals** and the **transportation and travel expenses** for the **patient**. Also, where an individual has been **certified** as being incapable of traveling alone, costs for an **accompanying individual** are included.

CRA did note that **certain requirements** must be met such as substantially **equivalent medical services not being available** in the individual's locality.

CRA also notes that even where medical services are available nearer to the individual's locality, if it is **reasonable** to **travel** to the place where the medical services were obtained, the **reasonability requirement** may be met.

MEDICAL EXPENSE - TUITION FEES

In an April 7, 2009 **Tax Court** of Canada case, the taxpayer claimed **tuition fees** paid to **Foothills Academy** of \$10,499 and \$21,525 as a **medical expense**.

The Court noted that the taxpayer must provide a **certificate** of an appropriately qualified person (example, a doctor) certifying that:

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- (i) the person has a **mental or physical handicap**; and
- (ii) the person requires equipment, facilities or personnel specially provided by **that school** for care, or care and training.

Taxpayer Wins - Partially

The Court disallowed the **medical expense** due to an **inadequate certificate**. CRA did say that if a proper certificate was provided they would reconsider the claim.

However, a **portion** could still be claimed (estimated to be 20%) as remuneration for **tutoring services**, that are supplementary to the primary education of the patient who has a

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learning disability or mental impairment as certified in writing by a medical practitioner.

EMPLOYMENT INCOME

87(2)

CRA ADMINISTRATIVE CHANGES

On June 11, 2009, CRA introduced administrative **policy changes** for taxable employment benefits.

This is a **brief summary** of some of the changes.



Overtime Meals and Allowances Provided to Employees

Commencing in **2009**, CRA will consider **no taxable benefit** to arise if:

- the value of the meal or meal allowance is **reasonable**; a value of up to \$17 will generally be considered reasonable,
- the employee works **two or more hours** of overtime right before or right after his/her scheduled hours of work, and
- the overtime is **infrequent** and **occasional** in nature. Less than three times a week will generally be considered infrequent or occasional. However, this condition may also be met where the meal or allowance is provided three or more times per week on an occasional basis to meet **workload demands** such as major repairs or periodic financial reporting.

If overtime occurs on a **frequent basis** or becomes the **norm**, CRA considers the overtime meal allow-

ances to be **taxable** since they start taking on the characteristic of additional remuneration.

Municipality or Metropolitan Area

Commencing in **2009**, CRA will accept that **allowances** paid for travel **within a municipality or metropolitan area** may be **excluded** from income if the allowance is paid **primarily** for the **benefit** of the **employer**. An allowance may be excluded from income when its principal objective is to ensure that the employee's duties are undertaken in a more efficient manner during the course of a work shift, and where allowances paid are not indicative of an alternative form of remuneration.

Loyalty Programs

Commencing in **2009**, CRA will **no longer** require **loyalty points** (e.g., frequent flyer points) that are **controlled** by the **employee** to be added as employment income by the employee as long as:

- the points are **not** converted to **cash**,
- the plan or arrangement is **not** indicative of an **alternate form** of remuneration, or
- the plan or arrangement is **not** for **tax avoidance** purposes.

Where an **employer controls** the points (e.g., a company credit card), the employer **will continue** to be required to report the fair market value of any benefits received by the employee on the employee's **T4 Slips** when the points are redeemed.

Non-Cash Gifts and Non-Cash Awards

The **current rules** are that up to **two gifts** and **two awards** costing **\$500 or less** respectively are **non-taxable** to the employee and **deductible** to the employer.

Commencing in **2010**, the following changes are being made to CRA's **gift and award policy**:

- Non-cash gifts and non-cash awards to an arm's length employee, **regardless of the number**, will **not** be **taxable** to the extent that the total aggregate value of **all non-cash gifts and awards** to that employee is less than or equal to \$500 annually. The total value in excess of **\$500 annually** will be taxable.
- In **addition** to the above, a separate non-cash **long-service/anniversary award** may also qualify for **non-taxable status** to the extent its total value is **\$500 or less**. The value in excess of \$500 will be taxable. To **qualify**, the **anniversary award cannot** be for **less than five years** of services or for five years **since the last long-service award** had been provided to the employee. For the purpose of applying the \$500 thresholds, the annual **gifts and awards threshold** and the **long-service/anniversary awards threshold** are **separate**. In other words, a short fall in value under one policy cannot be used to offset an excess value of the other.
- The employer gift and award policy will **not apply** to **non-arm's length employees** (e.g., relative of the proprietor, shareholders of

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closely held corporations) or related persons of the non-arm's length employee.

- For clarification purposes, items of an **immaterial or nominal value**, such as coffee, tea, T-shirts with employer logos, mugs, plaques, trophies, etc. will **not** be considered a **taxable benefit** to employees. Also, **performance-related awards** (e.g., sales targets) or **cash and near-cash awards** (e.g., gift certificates) will **continue** to fall **outside** the administrative policy and will be required to be included in the taxable **income** of the employee.

See

www.cra.gc.ca/tx/bsnss/tpcs/pyrll/bnfts/gfts/menu-eng.html for more information.

BUSINESS/PROPERTY INCOME

87(3) RESTRUCTURING OF BORROWINGS

In a March 31, 2009 **External Technical Interpretation**, CRA was asked to review a situation where the taxpayer has a **mortgage** on a **personal property** (interest expense is **non-deductible**) and proposes to **sell investments** (such as shares and bonds), use the proceeds to **repay** the **personal mortgage**, and then secure a joint line of credit with the personal property as security in order to **acquire investment assets** to earn income.



CRA notes that a taxpayer may **re-structure borrowings** and the **ownership** of assets so that the **interest** is **deductible** for tax purposes.

Caution: Professional assistance is needed in this area.

DEDUCTIBLE LIFE INSURANCE PREMIUMS

Premiums payable by a taxpayer under a **life insurance policy** used as **collateral** for a **loan** may be **deductible** in computing income from a **business or property** where certain conditions are met including:

- (i) the life insurance policy is **assigned** to a financial institution in the **course of borrowing** for business or property purposes;
- (ii) the **assignment** of the life insurance policy is **required** by the financial institution as **collateral** for the borrowing; and
- (iii) the **interest payable** in respect of the borrowing is otherwise **deductible** in computing the taxpayer's income for the year.

OWNER-MANAGER REMUNERATION

87(4) INDIVIDUAL PENSION PLANS (IPPs)

General Information

An **Individual Pension Plan (IPP)** is a **defined benefit** pension allowed under tax legislation. Once established, it eliminates most of the individual's RRSP deduction limit. Therefore, an **IPP** could be consi-



dered as a **replacement** retirement savings vehicle for an **RRSP**.

Comparison with RRSP

RRSPs work well for younger employees. Tax-free compound interest growth on RRSP contributions over their long pre-retirement asset accumulation period can provide an adequate pension. However, an RRSP does not work as well for employees close to retirement. For example, a \$21,000 RRSP contribution for a 60-year old employee does not buy much pension as the shorter pre-retirement period does not allow sufficient time for the magic of compound interest to work. At the **older ages**, an employee would require a **defined benefit** type of **pension plan** such as an **IPP** to provide **contributions** that are **in excess** of the **RRSP** deduction limit.

IPP Contributions

IPP contributions are **deductible** by the employer against corporate income.

For **2009**, an IPP member would require approximately **\$122,000 of employment income** to maximize IPP contributions. Sample 2009 IPP contribution amounts for the different ages include: approximately \$23,000 for age 40; \$28,000 for age 50; \$33,000 for age 60 and \$36,000 for age 65.

IPP contributions are based on both **income and age**, and **increase with age**.

An **IPP** also allows the employer to make **past service contributions** on behalf of the member.

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Ideal IPP Candidates & Time for Implementation

The ideal IPP candidates are **shareholder employees** or **senior executives** of profitable companies as well as **incorporated professionals** who are close to retirement.

The best time to implement an IPP is probably when the employer is having a hugely **profitable year** and is looking for tax deductions. The significant **IPP past service contribution** amount would be a good way to reduce corporate income to under the **small business limit**.

IPP Terminal Funding

IPPs are subject to many **funding restrictions** through actuarial assumptions. However, **catch-up contributions** can be done after pension commencement. This can be quite significant and can be tied in nicely with the **shareholder's exit** from the business.

ESTATE PLANNING

87(5)

EXPENSES INCURRED BY VOLUNTEERS ON BEHALF OF A REGISTERED CHARITY

In an April 28, 2009 CRA Release, CRA notes that where a **volunteer** has a **right to reimbursement** from the registered charity for expenses incurred, the charity may treat a **reimbursement waiver** from the volunteer as a **gift in kind** and issue a **receipt** for income tax purposes.



A **written direction** from the volun-

teer should be obtained confirming the right to reimbursement and direct the registered charity to issue a receipt rather than provide reimbursement - for example, "I ___ direct that the funds to which I am entitled by way of reimbursement for ___, and would otherwise be forwarded to me by cash or cheque, be transferred to ___ as my gift."

The charity should also have a **policy in place** on reimbursing volunteers.

The charity should report the amount of the **gift** on the Registered Charity Information Return (Form **T3010**).

HOME RENOVATION TAX CREDIT

87(6)

Under **proposed changes** a taxpayer can claim a **non-refundable tax credit** on the **2009** personal income tax return based on **eligible expenditures** incurred for **work performed** or **goods acquired** after January 27, 2009, and before **February 1, 2010**, in respect of an **eligible dwelling**.



The **HRTC** applies to eligible expenditures of more than \$1,000, but not more than \$10,000, resulting in a maximum credit of \$1,350 [(\$10,000 - \$1,000) x 15%].

The CRA site at www.cra.gc.ca/hrtc notes that generally **any dwelling** that you own and is **used personally** by you or your family can **qualify**, including your **home or cottage**.

The CRA site also includes this **ex-**

ample. William and his spouse Marie pay **\$5,000** to purchase an energy efficient furnace for their **home** and **\$3,500** to build a deck at their **cottage**. They also decide to have the area around the deck **landscaped** for **\$2,500**, bringing their total cost to \$11,000 (\$5,000 + \$3,500 + \$2,500). Marie claims an **HRTC** of **\$1,350** (\$10,000 - \$1,000 @ 15%).

Also, William and Marie may be eligible for the **eco ENERGY Retrofit-Homes Grant**. For more information about the eco ENERGY program see www.ecoaction.gc.ca.

Examples of **eligible costs** include renovating a kitchen, bathroom, or basement; new carpet or hardwood floors; building an addition, garage, deck, garden/storage shed, or fence; re-shingling a roof; a new furnace, wood stove, boiler, fireplace, water softener, or water heater; a new driveway or resurfacing a driveway; interior or exterior painting; window coverings directly attached to the window frame and whose removal would alter the nature of the dwelling; laying new sod; permanent swimming pools; fixtures (lights, fans); **associated costs** such as **permits**, professional services, equipment rentals and incidental expenses.

Expenses that will **not qualify** include furniture, appliances, audio and visual electronics, tools, carpet or housecleaning, maintenance contracts, and financing contracts.

Also, CRA notes in a May 19, 2009 **External Technical Interpretation**, that any **window covering**, including blinds, shutters and shades, that is directly attached to the window

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frame and whose removal would alter the nature of the dwelling will **qualify** for the **HRTC**. However, draperies or curtains would generally not be considered to be fixtures and will not qualify for the HRTC.

Also, CRA notes that the larger, heavier type of **hot tub** that needs to be **hardwired directly** to the homeowner's electrical panel would **qualify** for the HRTC. However, the "plug-and-play" type that comes with the cord connected and ready to use, without the need of a permanent electrical installation, would **not qualify** as it is not enduring in nature and integral to the eligible dwelling.

GST/HST

87(7)

GST/HST NEW HOUSING REBATES

In April, 2009, CRA released 27-page **Guide RC4028**, GST/HST New Housing Rebate, which provides information if you built or bought a **new or substantially renovated house** (including a condominium unit and a mobile home), if you built a **major addition** to your existing house or if you **converted** a non-residential property into your house. The Guide explains the **New Housing Rebate** including Forms GST190 and 191.

INVESTMENT MANAGEMENT FEES

In an April 16, 2009 **Federal Court of Appeal** case, the Court found that the fees paid to certain **investment managers** were **exempt from GST** because they are **financial services**.

Editor's Comment

The **investor** who has paid GST on investment manager fees could consider making a **GST rebate claim** under the Excise Tax Act for the two preceding years, assuming that the Government does not retroactively change the law. This should be discussed with your investment manager.

SALE OF REAL PROPERTY

Under the Excise Tax Act, sales of **real property** in Canada are generally **subject to GST/HST** unless the supply is eligible for a specific **exemption** such as where the sale is made by an **individual**, unless it was used primarily in a business carried on by the individual with a reasonable expectation of profit.

INPUT TAX CREDITS (ITCs) - CAUTION

In a 2009 **Federal Court of Appeal** case, **Telus acquired business assets** from EdTel and filed a joint election un-



der the Excise Tax Act such that the purchase resulted in **no GST**. However, some of the business assets acquired had not yet been paid for by EdTel and, therefore, the Agreement stated that **Telus would pay the unpaid liabilities** plus the **GST** owing of **\$1.8 million**.

CRA successfully disallowed the **\$1.8 million of GST ITCs** on the basis that **Telus was not the recipient of the supplies** for GST purposes.

Editor's Comment

Also, in **corporate structures**, it is **important** to ensure that it is only the **recipient of the supply** that may **claim the ITC**. CRA has made **reassessments** where the **wrong person** in a **corporate group** has claimed the ITCs.

HOME CONSTRUCTION INDUSTRY

In a **41-page** CRA Release (**RC4052**), CRA discusses the GST/HST information for the **Home Construction Industry** including who remits the tax, filing the return, claiming Input Tax Credits, substantial renovations, sales of real property, grants and subsidies, and special situations.

The preceding information is for educational purposes only. As it is impossible to include all situations, circumstances and exceptions in a commentary such as this, a further review should be done. Every effort has been made to ensure the accuracy of the information contained in this commentary. However, because of the nature of the subject, no person or firm involved in the distribution or preparation of this commentary accepts any liability for its

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